# APPENDIX A

## SECTION 230 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED

***Section 230 of the Congressional Accountability Act of 1995 (2 U.S.C. 1371), as amended by section 309 of the Legislative Branch Appropriations Act, 1996, Pub. L. No. 104-53, 109 Stat. 538 (Nov. 19, 1995):***

## PART F—STUDY

### SEC. 230. STUDY AND RECOMMENDATIONS REGARDING GENERAL ACCOUNTING OFFICE, GOVERNMENT PRINTING OFFICE, AND LIBRARY OF CONGRESS.

(a) IN GENERAL.—The Board shall undertake a study of—

(1) the application of the laws listed in subsection (b) to—

(A) the General Accounting Office;

(B) the Government Printing Office; and

(C) the Library of Congress; and

(2) the regulations and procedures used by the entities referred to in paragraph (1) to apply and enforce such laws to themselves and their employees.

(b) APPLICABLE STATUTES.—The study under this section shall consider the application of the following laws:

(1) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), and related provisions of section 2302 of title 5, United States Code.

(2) The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), and related provisions of section 2302 of title 5, United States Code.

(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and related provisions of section 2302 of title 5, United States Code.

(4) The Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.), and related provisions of sections 6381 through 6387 of title 5, United States Code.

(5) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), and related provisions of sections 5541 through 5550a of title 5, United States Code.

(6) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), and related provisions of section 7902 of title 5, United States Code.

(7) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(8) Chapter 71 (relating to Federal service labor-management relations) of title 5, United States Code.

(9) The General Accounting Office Personnel Act of 1980 (31 U.S.C. 731 et seq.).

(10) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).

(11) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.).

(12) Chapter 43 (relating to veterans' employment and reemployment) of title 38, United States Code.

(c) CONTENTS OF STUDY AND RECOMMENDATIONS.—The study under this section shall evaluate whether the rights, protections, and procedures, including administrative and judicial relief, applicable to the entities listed in paragraph (1) of subsection (a) and their employees are comprehensive and effective and shall include recommendations for any improvements in regulations or legislation, including proposed regulatory or legislative language.

(d) DEADLINE AND DELIVERY OF STUDY.—Not later than December 31, 1996—

(1) the Board shall prepare and complete the study and recommendations required under this section; and

(2) the Board shall transmit such study and recommendations (with the Board's comments) to the head of each entity considered in the study, and to the Congress by delivery to the Speaker of the House of Representatives and President pro tempore of the Senate for referral to the appropriate committees of the House of Representatives and of the Senate.

# APPENDIX B

May 2, 1996

## NOTICE OF REQUEST FOR INFORMATION

### STUDY OF
### STATUTORY RIGHTS AND PROTECTIONS AT THE
### GENERAL ACCOUNTING OFFICE
### GOVERNMENT PRINTING OFFICE
### AND LIBRARY OF CONGRESS

**MANDATED BY**
**SECTION 230 OF THE CONGRESSIONAL ACCOUNTABILITY ACT**

The Board of the Office of Compliance, established by the Congressional Accountability Act of 1995 (CAA), is studying the application of certain employment and antidiscrimination laws at the General Accounting Office (GAO), the Government Printing Office (GPO), and the Library of Congress (LC).

This notice requests GAO, GPO, and LC, their employees and employee representatives, persons who use their public services and public accommodations, as well as any other interested persons, to provide information helpful to the Board in conducting the study. To enable the Board to fully consider all information, such information should be submitted to: Executive Director, Office of Compliance, at the address or fax number printed below, by May 31, 1996.

### BACKGROUND

The Congressional Accountability Act, the first law passed by the 104th Congress, applies eleven employment and antidiscrimination laws to employees of the House of Representatives, the Senate, and instrumentalities of the legislative branch. The laws made applicable by the CAA provide rights and protections in the areas of: employment discrimination (race, color, religion, sex, national origin, age, disability); overtime pay and minimum wage; family and medical leave; employee polygraph protection; employee notification in case of office or plant closings or mass layoffs; employment and reemployment rights for those in the uniformed

services; occupational health and safety; labor-management relations; and discrimination on the basis of disability in the provision of public services and public accommodations. Eight of the eleven laws became effective under the CAA on January 23, 1996, and the remaining three will go into effect by the end of 1996.

Before enactment of the CAA, legal rights and protections in many of these areas already applied to the three largest Congressional instrumentalities -- GAO, GPO, and LC. The CAA makes certain initial modifications in the laws that now apply, and mandates a study that will:

- review the laws, regulations, and procedures applicable to these instrumentalities and their employees;

- evaluate whether the rights, protections, and procedures currently in place are "comprehensive and effective;" and

- provide recommendations for improvement in regulations and legislation.

As originally enacted, the CAA directed the Administrative Conference of the United States (Conference) to conduct the study and submit it to the Board, which would then transmit the study, together with the Board's comments, to the Congress and the instrumentalities by December 31, 1996. However, Congress amended the CAA in November 1995 to transfer responsibility for conducting the study from the Conference to the Board.

To assist interested persons in identifying information pertinent to the study, Appendix A lists the laws made applicable by the CAA and describes the statutory, regulatory, and procedural provisions that will be the subject of the study.

## SCOPE OF THE STUDY

**Part 1. Application of laws, regulations, and procedures.** The first part of the study will describe:

(a) *What laws apply:* the substantive statutory provisions applicable to the instrumentalities and their employees. These will include the 11 laws made applicable by the CAA, as well as the GAO Personnel Act and certain provisions of civil service law, which apply, supplement, or affect the rights and protections of the laws made applicable by the CAA.

(b) *How do the laws apply:* the administrative and judicial mechanisms that apply the substantive provisions of laws to the instrumentality and its employees. These will include: (1) the authority of regulatory agencies, or of the instrumentality itself, to issue regulations, adjudicate or resolve claims, or take enforcement action; (2) judicial mechanisms for adjudicating claims and hearing appeals from administrative decisions; and (3) the remedies that may be granted in case of a violation.

(c) *Regulations and procedures:* the regulations and administrative procedures used to apply and enforce these laws to the instrumentality and its employees. These will include: (1) regulations and procedures issued by regulatory agencies that have jurisdiction over the instrumentalities, (2) regulations and procedures issued by the instrumentalities themselves, and (3) collective bargaining agreements that provide procedures for applying the rights and protections of the listed laws.

**Part 2. Evaluation.** The second part of the study will *evaluate* whether the rights, protections and procedures, including administrative and judicial relief, are "comprehensive and effective."

The study will use the CAA itself as a standard against which to evaluate the rights, protections, and procedures applicable at the instrumentalities. Thus, the study will include a comparison between the rights, protections, and procedures applicable at each of the instrumentalities with the corresponding rights, protections, and procedures applied to the House of Representatives and the Senate under the CAA.

Furthermore, the rights, protections, and procedures applied at the three instrumentalities are in many ways similar to those at executive branch agencies. In conducting the evaluation, the study will consider how the rights, protections, and procedures applied at each instrumentality compare with those available to executive branch employees generally.

**Part 3. Recommendations.** Finally, the study will include *recommendations* for improvements in regulations or legislation, including proposed regulatory and statutory language.

## REQUEST FOR INFORMATION

The purpose of this Notice is to request that the three instrumentalities, their employees and employee representatives, and persons who use public services and public accommodations at the instrumentalities, as well as any other interested persons, provide information helpful to the Board in conducting the study, such as:

- Studies, evaluations, and other reports conducted by the instrumentalities or by outside auditors or agencies, evaluating the rights, protections, and procedures available to employees and users of public services and accommodations at the instrumentalities. Please include reports showing the extent of compliance with applicable requirements, and the timeliness and effectiveness of responses to any complaints.

- Information showing the extent to which rights, protections, and procedures at the instrumentalities are "comprehensive and effective."

- Identification of any rights, protections, and procedures that the commenter believes may *not* be "comprehensive and effective."

- Information that would help the Board in comparing the rights, protections, and procedures at each instrumentality with: (1) those applied to the House of Representatives and the Senate under the CAA[1] and (2) those generally applicable to executive branch employees.

- Information that would be helpful to the Board in making recommendations for improvements in regulations or legislation, and in ascertaining how a recommended change would affect the "comprehensiveness and effectiveness" of applicable rights, protections, and procedures, and other likely consequences of the change.

Commenters are requested to provide specific rationale and any supporting information.

**PUBLIC DOCUMENTS**

All materials submitted to the Executive Director in response to this notice will be considered public documents and will be made available for inspection upon request by any member of the public. (If an employee submits any comment or other document and requests not to be identified, the identity of the employee will be kept confidential.)

**FOR FURTHER INFORMATION**

For further information about this notice and the study, please contact Lawrence Novey, Senior Counsel to the Office of Compliance, at (202) 724-9250.

Ricky Silberman
Executive Director

[1] Any individual who desires additional information about the rights, protections, and procedures applicable under the CAA may contact the Office of Compliance.

## APPENDIX A

In describing the application of laws, regulations, and procedures at the instrumentalities, the study will cover the following:

### I. STATUTORY AUTHORITIES

**A. SUBSTANTIVE RIGHTS AND PROTECTIONS.** The study will identify and describe the substantive provisions of law that apply, or will apply, to the instrumentalities and their employees.

**1. Laws made applicable by the Congressional Accountability Act.** The laws to be studied are listed in section 230(b) of the Congressional Accountability Act (CAA).

*a. EMPLOYMENT DISCRIMINATION*

- Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e et seq.) (Title VII) prohibits discrimination in employment because of race, color, religion, sex, or national origin.

- The Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 621 et seq.) (ADEA) prohibits employment discrimination against individuals 40 years of age and over.

- Title I of the Americans With Disabilities Act of 1990 (42 U.S.C. §§ 12101-12117) (ADA) and the Rehabilitation Act of 1973 (29 U.S.C. §§ 701 et seq.) prohibit employment discrimination against qualified individuals with disabilities.

- The Equal Pay Act (29 U.S.C. § 206(d)) prohibits pay discrimination on the basis of sex.

*b. EMPLOYEE BENEFITS, LABOR, HEALTH AND SAFETY*

- The Fair Labor Standards Act of 1938 (29 U.S.C. §§ 201 et seq.) (FLSA) governs overtime pay, minimum wage, and child labor protection.

- The Family and Medical Leave Act of 1993 (29 U.S.C. §§ 2611 et seq.) (FMLA) entitles eligible employees to take leave for certain family and medical reasons.

- The Employee Polygraph Protection Act of 1988 (29 U.S.C. §§ 2001 et seq.) (EPPA) restricts use of lie detector tests by employers.

- The Worker Adjustment and Retraining Notification Act (29 U.S.C. §§ 2101 et seq.) (WARN) assures employees of notice in advance of office or plant closings or mass layoffs.

- Section 2 of the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. chapter 43) (USERRA) protects job rights of individuals who serve in the military and other uniformed services.

- The Federal Service Labor-Management Relations statute (5 U.S.C. chapter 71) establishes the rights of individuals to form, join, or assist a labor organization, or to refrain from such activity, and to collectively bargain over terms and conditions of employment through their representatives.

- The Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651 et seq.) (OSHA) protects the safety and health of employees from physical, chemical, and other hazards in their places of employment.

c. *DISCRIMINATION ON THE BASIS OF DISABILITY IN PROVIDING PUBLIC SERVICES AND PUBLIC ACCOMMODATIONS*

- Titles II and III of the Americans With Disabilities Act of 1990 (42 U.S.C. §§ 12131-12189) (ADA) prohibit discrimination against qualified individuals with disabilities in the provision of public services and public accommodations.

**2. Civil Service Laws and Other Relevant Statutes.** The laws to be studied under section 230(b) of the CAA also include certain civil service and other laws that apply, supplement, or affect the substantive rights and protections afforded by the laws listed above, including several provisions of civil service law codified in title 5 of the U.S. Code, and the General Accounting Office Personnel Act of 1980 (31 U.S.C. §§ 731 et seq.).

**3. CAA Provisions with Future Effective Dates.** Several provisions of the CAA become effective at the instrumentalities one year after the study is transmitted to Congress:

- CAA provisions that now apply to Congressional offices will be extended to cover GAO and LC (but not GPO) with respect to four of the laws: *EPPA*, *WARN*, *USERRA*, and *OSHA*.

- GAO and LC (but not GPO) will be subject to the private-sector provisions, rather than the federal-sector provisions, of the *FMLA*, except that the authority of the Department of Labor will be exercised by the heads of these two instrumentalities.

- In case of any claims under *ADA titles II and III*, the judicial and administrative mechanisms under section 717 of Title VII will apply for all three instrumentalities,

except that the authorities of the Equal Employment Opportunity Commission (EEOC) will be exercised by the heads of the instrumentalities.

To enable Congress to review the delayed statutory provisions during the year after the study is transmitted, the study will evaluate and provide any necessary recommendations regarding these delayed provisions.

**B. HOW DO THE LAWS APPLY?** The study will identify and describe the statutory provisions establishing administrative and judicial mechanisms that apply the laws at the instrumentality. This includes:

- authority for the instrumentalities, or for regulatory agencies that have jurisdiction over the instrumentality, to perform regulatory functions, such as issuing regulations, hearing and resolving employee claims, or conducting enforcement activities;

- judicial mechanisms to adjudicate employee claims or to hear appeals from agency decisions; and

- the kinds of remedies that can be awarded in case of a violation.

## II. REGULATIONS, PROCEDURES, AND IMPLEMENTATION.

The study will identify and describe the regulations and administrative procedures used to apply and enforce those laws to the instrumentality and its employees. This includes:

- regulations and procedures issued by the instrumentalities to apply and enforce the laws (instrumentalities may call these "regulations," "orders," "notices," or "instructions");

- regulations and procedures applicable to the instrumentality that are issued by outside regulatory agencies and offices; and

- any procedures under collective bargaining agreements that are used to apply and enforce the listed laws to the instrumentality and its employees.

# APPENDIX C

## SUMMARY OF COMMENTS

## General Accounting Office (GAO)

### GAO Management

Comments from officials of GAO, submitted on behalf of the agency, stated that most of the protections given to GAO employees under the CAA were already available to the employees under the terms of other laws, and further stated that GAO provides a comprehensive and effective set of policies and procedures to protect the rights of its employees.

The GAO comments also stated the belief that the GAO Personnel Appeals Board (PAB) has effectively performed its roles, but also stated that there is some Congressional concern about the need for GAO to have a PAB. The comments further stated that, because of budgetary considerations, the House Report accompanying the FY96 Legislative Branch Appropriations Bill requested GAO to review the PAB and consult with the oversight committee to find a more appropriate placement for the PAB's functions. Accordingly, GAO stated that it has been considering what would be a more appropriate placement for the PAB functions, but has not come to any conclusions on this matter.

The GAO comments offered several recommendations for statutory amendment. First, GAO recommended that sections 201(c)(1) and (2) of the CAA, which insert GAO into the coverage provisions of Title VII and the ADEA, be repealed. GAO stated that it would be subject to both of those laws anyway, because the laws apply to "executive agencies," a term that includes GAO. GAO stated that sections 201(c)(1) and (2) are therefore redundant, and, more important, are not consistent with past practice of legislative drafters and may create some ambiguity with respect to the inclusion of GAO under other statutes.

The GAO comments also expressed concern that sections 201(c)(3)(E) and 210(g) of the CAA (which assign certain authorities of the EEOC to the Comptroller General) would interfere with the division of powers established between the Comptroller General and the GAO Personnel Appeals Board (PAB) pursuant to the GAO Personnel Act (GAOPA). GAO recommended that provisions of these CAA sections covering the authority of the Comptroller General be repealed, or, in the alternative, that the provisions be amended to reference that the Comptroller General and the PAB share the responsibility of the EEOC pursuant to the GAOPA.

With respect to the Family and Medical Leave Act (FMLA), GAO's comments recommended that GAO should remain covered under the provisions of title 5, United States Code. The comments stated that GAO employees are career civil servants who have always been subject to the annual and sick leave provisions of title 5, and that these provisions, together with the FMLA provisions in title 5, form a comprehensive scheme for federal employees' leave entitlements. The comments

also recommended that the current appeals procedures for violations remain in place, and stated that an employee may seek redress through OPM's claims settlement authority or through the Court of Federal Claims.

With regard to the Worker Adjustment and Retraining Notification Act (WARN Act), GAO recommended that coverage of GAO under the CAA be repealed. The comments stated that GAO's Order on reductions in force (RIFs) affords employee protections that are more extensive and comprehensive than those under the WARN Act. Those procedures, the commenter stated, form an integrated system of which the notice provision is only one component. Protections include guaranteed consideration of seniority, performance, and veterans' preference in making the RIF decision. Also, even as to the limited issue of notice protection, the commenter stated that GAO's RIF order provides employees more extensive rights than the WARN Act provisions of the CAA. For example, the commenter stated that the GAO order is not restricted to plant or office closings, but that full notice must be provided if even just one employee is affected by a RIF. GAO employees may resort to the PAB to decide whether notice is defective. The commenter also stated that the PAB has the authority to direct that the employee be reinstated until the notice defect is corrected and that this relief is not provided under the WARN Act.

Concerning titles II and III of the Americans with Disabilities Act (ADA) (which forbid discrimination on the basis of disability in the provision of public services and public accommodations), GAO recommended that section 210(g) of the CAA be amended to provide that the remedies available to an individual alleging a denial of rights by GAO would be such remedies as would be awarded under sections 203 or 309(a) of the ADA.[1] GAO's comment stated that this would insure consistency of remedies provided by GAO with those provided by congressional entities under the CAA.

GAO also recommended several amendments to the procedures as provided in the CAA:

The GAO comments recommended that the CAA be amended to provide a mechanism whereby employing offices could challenge the issuance of an Occupational Safety and Health Act (OSHA) citation under the CAA. The comments stated that section 10 of OSHA gives an employer in the private sector 15 working days from notice of a citation to notify the Secretary that he wishes to contest the citation. The comment further stated that, if such procedure were implemented under the CAA, employing offices would not be required to wait until an enforcement proceeding to challenge a citation.

GAO recommended that section 407 of the CAA be amended so that the employing office, rather than the Office of Compliance, is the respondent in judicial review proceedings. The

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[1] Section 210(g) added a provision to the ADA making the remedies and procedures set forth in section 717 of the Civil Rights Act of 1964 available to any qualified person with a disability who is a visitor, guest, or patron of an instrumentality of Congress who alleges a violation of certain rights and protections under titles II and III of the ADA.

comment stated that the employing office is clearly an interested party and should be the named respondent. The comment also suggested that consideration be given to the fact that the federal courts and the GAO PAB are not parties in appellate review proceedings, nor is the Merit Systems Protection Board where the employee seeks review of a decision on the merits of the underlying personnel action.

GAO also recommended that section 414 of the CAA be amended so that GAO could settle a case without the approval of the Executive Director of the Office of Compliance. If all parties agree that a case should be settled, the comment questioned the necessity for review by the Executive Director. GAO further stated that there seemed to be no reason for Executive Director review when any costs of settlement will be funded out of GAO's appropriation. In this respect, the comment stated, GAO is different from most other offices subject to section 414, since their settlements are funded by the account established under section 415 of the CAA.

## GAO Personnel Appeals Board

Comments from officials of the PAB, submitted on behalf of the Board, recommended that the study recognize the similarity of the legal protections in GAO to those in the executive branch. The comments stated that, in enacting the GAOPA in 1980, Congress concluded that the independence of GAO was threatened by having its employment matters subject to review by the very agencies that GAO could be called upon by Congress to evaluate, and that GAO's mission therefore mandates an independent and neutral personnel review system like the PAB provides.

The comments also described the PAB's oversight role in recommending systemic changes at GAO and the role of the PAB General Counsel as a salaried employee advocate, which reduces the potential cost to GAO of outside legal fees where GAO is on the losing side in an employment rights case. The comments stated that the PAB system, overall, is a comprehensive and effective mechanism for accomplishing the goal of enforcing employee rights at the GAO.

The comments stated that the PAB is well-suited to handle other GAO employee appeals in areas applied by the CAA that are not currently under the PAB's jurisdiction. The subject areas over which the PAB thinks that it could exercise enforcement authority are: public access provisions of the ADA, the Fair Labor Standards Act (FLSA), the FMLA, the Employee Polygraph Protection Act (EPPA), the WARN Act, and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

The comments also stated that consideration should be given to the potential problems of having GAO employees bringing charges against GAO management to the Office of Compliance, when GAO may well be called upon to evaluate that office. According to the comments, this type of conflict situation is exactly what Congress sought to avoid in giving GAO an independent personnel system and establishing the PAB.

The comments suggested that it might be desirable to centralize enforcement coverage of

legislative employees for whom enforcement by the Office of Compliance is not appropriate due to extensive differences in statutory protection. The comments stated that GAO, GPO and the Library have personnel legislation directly comparable to that of executive branch agencies, and that the PAB is the only established board equipped to deal with the full range of appeals arising from these instrumentalities.

Finally, the comment recommended reducing the number of members of PAB from five members to three members total in order to enhance efficiency of the PAB.

A PAB official submitted a separate comment on behalf of the PAB in response to an inquiry from a staff member at the Office of Compliance regarding the legislative removal of the PAB's stay authority with respect to RIF-based actions. The comment stated that the PAB is troubled by the change and had communicated its opinions to the Comptroller General when the proposal was made by him to the Congress. The comment further stated that the PAB remains unaware of the rationale for denying the availability of this relief to GAO employees affected by a RIF action. The comment stated that the PAB continues to support the availability of stay relief, in appropriate circumstances, for GAO employees appealing a RIF-based action.

## GAO Employee Councils

(1) An employee council that concentrates on civil rights issues submitted comments stating their belief that the separate personnel legislation for GAO has worked to the detriment of employee rights, and that alternatives to the present system, most likely requiring legislative change, must be found. The comment stated that the PAB receives it budget through GAO and that the Board members and the PAB General Counsel are appointed by the Comptroller General, and "[m]any employees do not believe that the PAB is either independent or effective in protecting employee rights."

The comment criticized the November 1995 legislation granting GAO management wide latitude in drawing RIF rules. The comment stated that the GAO's use of narrowly drawn competitive areas likely allowed African Americans to be disproportionately affected and allowed GAO management to retaliate against people who filed complaints. Furthermore, the withdrawal of the PAB's authority to stay a RIF "effectively rob[s]" employees of job rights where employees were targeted by RIFs because of unlawful discrimination.

The commenter stated that GAO management has a history of challenging the PAB's authority to address various issues, and recommended committing to law all those protections that currently apply in the executive branch.

In the labor-management relations area, the commenter stated that there is no collective bargaining at GAO, and that the employee councils, which are chartered by GAO management, can only provide their views and that GAO "management routinely ignores us."

Regarding the GAO dispute resolution efforts in civil rights matters, the commenter stated that

internal GAO mediation services “are provided by agency staff who are responsible for implementing the agency's civil rights and other programs and who are controlled by GAO management. Employees may be reluctant to utilize these resources, because they are not independent and may not be neutral.” The commenter claimed that the GAO civil rights office works closely with the GAO Office of the General Counsel in drafting decisions. The commenter added that employees' options regarding court review of Title VII claims have been narrowed by the U.S. Court of Appeals for the D.C. Circuit in *Ramey v. Bowsher*, which held that, after employees have chosen to bring their case to the PAB, their right to a jury trial in district court is forfeited. Finally, the commenter expressed concern about the lack of timeliness in the PAB's handling of cases.

This commenter attached a letter from an employee, who also commented separately. The employee stated that the PAB General Counsel does not function independently of the GAO, but rather favors the GAO by settling cases that merit prosecution.

(2) A comment from another employee council stated that GAO employees have rights and protection beyond those afforded other legislative branch employees by the CAA, and that those rights and protections are "comprehensive and effective." Specifically, the commenter stated that, while the council did not agree with all the PAB decisions, the PAB seems to act independently and without any predisposition to rule either in management's or the employees' favor.

The employee council member suggested that legislation should be amended to clearly designate the PAB as the arbiter for employee complaints and class actions arising from employment and anti-discrimination laws and regulations. The commenter suggests that FMLA, OSHA, polygraph protection, and other claims would be properly heard by the PAB.

(3) A comment from the employee council with an interest in persons with disabilities stated that overall, GAO has done very well in the past in hiring persons with disabilities. The commenter stated that problems exist in identification of current employees with disabilities. With regard to reasonable accommodations, the commenter stated that front-line supervisors often deny requests for accommodations of disabilities, and suggested that GAO can do much better in sensitizing managers about what a disability is. Regarding FMLA, the commenter stated that GAO has implemented this legislative mandate very well and there are no significant problems. Further, the commenter observed that, overall, GAO has made many improvements in making the headquarters building accessible. The commenter added that the PAB has been especially helpful in focusing GAO attention on those statutes that directly affect disabled employees, and suggested that PAB authority should be more explicit with regard to addressing issues relevant to laws that it enforces.

## Government Printing Office (GPO)

### GPO Management

A GPO official, on behalf of the agency, urged the continuation of the status quo, with minor

changes, and supported a consideration of the "resource sharing among the legislative branch agencies." The comments explained: "If it is Congress' desire that legislative branch agencies not use the boards and services of the executive branch to adjudicate employment and related issues, perhaps GAO's Personnel Appeals Board or a similar panel could be the designated body for such purposes with respect to all three legislative branch agencies."

The GPO comments recommended against extending EPPA provisions to GPO, because GPO has no intention to administer lie detector tests. GPO stated that it is not averse to being covered by WARN Act provisions, but believes that extending coverage to the agency would not benefit employees and would merely duplicate or conflict with the existing notice protections under collective bargaining obligations and under applicable regulations regarding RIFs. Comments stated that GPO would not be opposed to being included in the USERRA provisions. As to whether GPO should be switched from FMLA provisions of title 5, U.S. Code, to those in title 29, GPO observed that its FMLA program has worked well under OPM guidelines, which apply under title 5. Finally, GPO commented that GPO's performance and compliance record has been found to be "better than the average federal or private operation," and therefore GPO believes that it is unnecessary to extend additional OSHA coverage to the agency at this time. GPO further explained its view that any additional coverage would require a limited staff to devote time and energies to administrative requirements, thereby likely reducing GPO's ability to fully protect its employees.

A GPO official responsible for equal employment opportunity also submitted recommendations separately. These comments recommended that procedures be established to enable employees who work in the EEO program to file complaints outside the agency. Furthermore, the comments recommended that GPO employees be allowed to have decisions dealing with position classification be reviewed outside of the agency, the same as employees in the executive branch. The comment noted that, because of this lack of recourse to an outside agency, employees often bring the unfairness of this situation to the attention of the agency through the discrimination complaint process.

### GPO Employee Representative

A union at GPO submitted comments noting that certain provisions of the CAA will apply to GAO and the Library, but not to GPO (relating to EPPA, WARN Act, USERRA, OSHA, and FMLA), and questions whether or not GPO should be included in these provisions. The union also commented that GPO's classification system is not fair and equitable when it involves minority workers.

### GPO Employees

Several GPO employees expressed concern about the slowness of the EEO process at GPO. An employee also objected to GPO's pre-selection of employees for upward mobility programs.

One commenter, who is a non-bargaining unit employee located in a regional GPO office, stated that non-bargaining unit employees' terms and conditions are linked to the terms and conditions

negotiated by management and labor in headquarters. The commenter expressed the view that GPO has too much power in setting wage rates with non-bargaining unit employees' having no means of appealing wage determinations that adversely affect them.

## Library of Congress

### Library Management

Comments submitted on behalf of the Library urged, at a general level, that "the special relationship between the Library and the Congress" be considered. The comment stated that the Library's primary historical mission is to serve Congress, and that, operationally, there are strong connections between the Library and the day-to-day functions of the Congress.

The Library's comments made several specific recommendations. First, regarding the handling of discrimination complaints, the comment stated that Library employees now lack the availability of an office, outside of the Library, to provide mediation services to them, and lack an administrative adjudication system that is outside of the control of their employer. The comment stated the belief that employees would have increased confidence in impartiality and expertise of the claims system if the Library is placed under the CAA's EEO procedures, and recommended that the employees be authorized to use the administrative procedures of the Office of Compliance under the CAA, after first having used the EEO procedures of the Library for a period of up to 180 days.

With regard to OSHA and the ADA public access provisions, the comments stated that the CAA recognizes the important role of the Architect of Capitol in both areas, and that the role is so pervasive that it would be sound policy to promote an integrated approach that avoids fragmentation of procedures and responsibility. The commenter adds that "Congress might find appealing the benefit of having the Office of Compliance's inspection reports on the Library both for OSHA and ADA public access" for considering the cost of "correcting violations and anticipating remedial issues." The comment therefore recommends that legislation be enacted to shift the remedial system for ADA public access matters, insofar as it concerns the Library, from private enforcement through court suits to enforcement through the Office of Compliance, as the Congress has provided for all other Capitol Hill entities.

The comments recommended that the Library be placed under the labor-management provisions of the CAA. The comment stated that, together with the other recommendations, this would place the Library within a labor and employment law system administered by a single body, and the commenters underscored their belief in the long-term benefit of an integrated approach to employment matters (including labor-management relations) at the Library, under a common regulatory and enforcement office.

With regard to the FMLA, the comments recommended that the Library remain under the provisions of the FMLA that apply in the executive branch, not those provisions that apply to the

private sector. The Library stated that its pay and personnel officials have worked diligently to establish an administrative system for family and medical leave within the parameters of the general federal leave system, and they are concerned that a shift to private sector provisions of the FMLA would be administratively disruptive without serving a significant public purpose. The Library also recommended that the procedures of the Office of Compliance be applied to the resolution of any family and medical leave grievances at the Library.

The Library also recommended that, if the Library is put under the Office of Compliance, it is imperative that legislation be enacted to permit the Department of Justice to continue to represent the Library for that purpose. The commenter added that the Library also must continue to have access to the GAO Judgment Fund for payment of claims against the Library.

Another commenter, representing the Congressional Research Service (CRS) of the Library, emphasized the "exclusive congressional support role" that CRS plays in serving Congress. Based on that role, the commenter recommends placing the CRS under the jurisdiction of the Office of Compliance, particularly with regard to the labor-management relations laws. The commenter stated that CRS is a legislative entity, that it is anomalous and raises separation-of-powers concerns for labor-relations issues involving CRS to be resolved by the Federal Labor Relations Authority, an agency in the executive branch, and that CRS should be treated the same as the other legislative entities on Capitol Hill.

A Library official whose responsibility involves addressing the issues concerning persons with disabilities stated that there is a need for a comprehensive survey of Library staff to determine the number and types of disabilities among them and applying the authority given to other federal agencies to establish a selective placement program for qualified individuals with disabilities.

### Library Employee Representatives

Two labor organizations representing Library employees recommended that application of the federal sector Labor-Management Relations statute to the Library be preserved, pointing to the number of cases filed with Federal Labor Relations Authority (FLRA) and the agreements negotiated with the Library management since the FLRA jurisdiction began. The commenters stated that, "on balance, we believe the record of the FLRA clearly reflects an even-handed approach between the labor organizations and Library management." The unions also stated that the CAA contains a number of provisions to fit a political environment, which have no bearing on employees of the Library, who do not engage in partisan politics. For example, the comment quoted from section 220(e)(1)(B), which requires the Board to exclude employees from coverage by labor-management laws if exclusion is required because of a conflict of interest or Congress' constitutional responsibilities. One of the unions further stated that the Office of Compliance may be unable to handle the extra workload involved in assuming jurisdiction over Library matters because of a focus on congressional offices and limited resources.

With regard to discrimination coverage at the Library, the comment urged that there be "extensive and thoughtful study" before making changes in the EEO laws. The comment cautions not to go

from an "imperfect" system, which affords an investigation into EEO charges, to a system that lacks any investigatory component, like the procedures under CAA. After reviewing the Library's proposal, one of these unions responded that the EEO procedures used in the executive branch "should govern at the Library of Congress, except that administrative appeal to the Office of Compliance should be substituted for appeal to the EEOC."

With respect to FMLA, union commenters recommended that coverage be retained under title 5, explaining their view that title 29 provides exemptions tailored to the private sector that are not appropriate to civil service employment. These commenters also stated that the right to sue for civil damages under title 29 (which would become available if the CAA provision takes effect) would be "a rather extraordinary remedy when extended to federal employees," and that "administrative remedies that are typically available to federal employees would appear to be a more appropriate response to" an FMLA violation.

With regard to OSHA, these commenters stated that the Library's Safety Services Office has "an active safety program" and the Joint Labor-Management Safety and Health Committee, whose existence is guaranteed by all three union agreements, is "unique in the federal government." A union stated that it proposes no statutory changes to the applicable provisions of the CAA, and "strongly supports the efforts of the General Counsel's Office of the Office of Compliance to apply OSHA standards to the Library of Congress and other legislative branch agencies." The commenter also referred to the Library's comment that the Architect's role is so pervasive that an integrated approach should be promoted that avoids fragmentation of procedures and responsibilities, and the union expressed its belief that it would make sound public policy to establish a common procedure for both the Library and the Architect with respect to OSHA and the public access provisions of the ADA.

A commenter representing the CRS bargaining unit urged that the Library not be placed under the labor-management provisions of the CAA. The comment stated that section 220(e) of the CAA requires the Board of the Office of Compliance to exclude from coverage any covered employee listed in section 220(e)(2) either because of a conflict of interest or appearance of a conflict of interest or because of Congress' constitutional responsibilities. The comment stated concern that "[i]f the Library and CRS were included under the CAA, then the Board may be compelled to exclude all employees in CRS from coverage of the labor relations program." The comments stated that the result would be the complete decertification of the existing union at CRS. The commenter recommended keeping the Library under the jurisdiction of the FLRA because the current arrangement fully comports with the purpose and intent of the CAA and the application of the exemption under section 220(e) of the CAA could only move the Library away from the comprehensive scheme now in place. The commenter stated that the current system is comprehensive and effective, and it is beyond the directive of this study to recommend the implementation of a scheme that is "*less* comprehensive." The commenter added that placing the Library and Congressional Research Service (CRS) within the CAA would be disruptive to labor-management relations and would not improve either those relations or employee protections at the Library. Further, the nature and character of non-partisan employment and objective work

product in CRS differs substantially from employment in the House or the Senate.

Further, the commenter stated that the Library should not be covered under the congressional labor-management relations program because the Librarian is an officer of the United States, appointed by, and subject to the orders of, the President. In particular, the comment stated the "Librarian is vested with executive authority for copyright and other matters." In addition, being subject to the federal labor-management program, the commenter stated, enables CRS analysts and attorneys to take positions adverse to members of Congress, because "[e]mployees who are protected by tenure are free to express objective opinions and conclusions without the fear of retaliation or retribution."

### Library Employees

An employee commenter expressed his concern about the lack of coverage in the anti-discrimination laws that apply to the Library regarding employment discrimination based on sexual orientation. There were several comments from individual employees regarding their individual cases. One Library employee commented regarding her own race discrimination complaint against the Library and her dissatisfaction regarding slowness in its processing. Another commenter charged that he had been discriminated against at the Library by the failure of the EEO office to investigate his charge that a second employee, who was a member of a minority group, engaged in allegedly racist conduct against the commenter, who is not a minority. Another employee commented on the failure of the Library to take into account the total length of all federal service (in both executive and legislative branches) for RIF purposes.

## Other Comment

A nonprofit organization, which is concerned with advancing the interests of people who are blind or visually impaired, commented regarding the need for accessibility of facilities and information services, at all three instrumentalities, to individuals whose vision may be impaired. The commenter emphasized the importance of a consistent application of the ADA Accessibility Guidelines developed by federal agencies in consultation with blind and visually impaired consumers. Moreover, the commenter highlighted the need that information generated by pubic entities be made available in alternative, accessible formats, in addition to the ordinary printed format.